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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,147	01/26/2001	John J. Castellot JR.	JCW-001	6199

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BOSTON, MA 02109

EXAMINER

DONNELLY, JEROME W

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 03/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/77/147

Applicant(s)

Castellot

Examiner

Jerome W Donnelly

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-- Th MAILING DATE of this communication app ars on th cover sh et with th correspondenc addr ss --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 6/25/01
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 25-33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

Claims 26-33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1,2,3,4,6,8,11,14,18,29,20,23,24 and 34-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Flick.

Flick discloses leg exerciser comprising: textured foot pads a base having tracks, gliders (30b) pulley's, a cable, end (bumpers) 20 and 22.

In regard to claim 18 the examiner reminds the applicant that he has failed to claim any structure, which adapts his device to being attached, in any manner to a chair.

In regard to claim 35 the examiner reminds the applicant that a chair has not been positively claimed and that flick is adaptable or capable of being attach to any object desirable.

Claims 17,18,19,21,25 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Fundom.

Fundom discloses a leg exerciser comprising first and second foot pads, a base (12) adapted to be mounted to a chair, by member (18), tracks (26) and a flange assembly (50 and 52) and a base member having a first piece (82) rotatably mounted to a second piece (12), by a hinge (76,80) and means (16) for mounting the device to a floor.

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Claims 1,5,7,10,11,12,13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Friedebach et al.

Friedebach et al discloses a leg exercise comprising foot pads, a base members tracks, gliders in the form of wheels, foldable components, resistance means, a rigid toe strap (60), feet (42) and an elevated guard 16.

Claims 1,9 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Rawls.

Rawls discloses a deice comprising a foot pad, a base member comprised of several components, track members gliders, an incline stand 936) mounted to a bottom surface of a portion of the base member at or to element (35) and said foot pad being connected to glider members by bolt members (77).

Claims 18,21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fundom in view of Kuo.

Fundom discloses a leg exerciser comprising: first and second foot pad, a base member adapted to be mounted to a floor through members (16), tracks (26), means (18) for attaching said device to a bed.

Fundom however does not disclose his device wherein the base member is form having first piece and a second piece rotatably mounted together by a hinge.

Kuo discloses a leg exercising device wherein its base member is formed of two pieces and hingably attached together and as broadly claimed includes a portion (61), which laps rail section (6).

Given the above teachings the examiner notes that it would have been obvious to one of the ordinary skill in the art to manufacture the base member (12) of fundom as a two part

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foldable base, having a laped hinged area, for the purpose of enhancing portability and as obvious design in manufacturing frame members.

Claims 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jen-Huey.

Jen Huey discloses a device as claim absent foot strap members. The examiner however noted that it would have been obvious and that it is notoriously well known in the art to include strap member on pad members in the art of foot exercising devices.

In regard to claims 37 and 38 the examiner considers element 10 is a location, which as broadly claimed, is adapted to be attach to a chair.

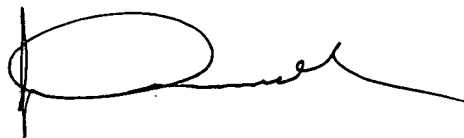
Claims 18 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kynast et al.

Kynast discloses an exerciser comprising: a pad (58), a base member mountable to a chair, a track (26) and a resistance device (113) adapted to apply pressure to an edge of a track so as to prohibit movement.

Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number 703-308-2668.

Donnelly/dl

March 20, 2003

A handwritten signature in black ink, appearing to read 'Jerome W. Donnelly', with a long horizontal flourish extending to the right.

Jerome W. Donnelly  
Primary Examiner